

LARRY C. HOFFMAN

IBLA 82-965

Decided June 19, 1985

Appeal from decisions of the Montana State Office, Bureau of Land Management, declaring lode mining claims abandoned and void. M MC 24038 through M MC 24040 and M MC 42523.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982), the owner of an unpatented mining claim located on public land must file a notice of intention to hold the mining claim or evidence of annual assessment work on the claim prior to Dec. 31 of each year in the proper office of the Bureau of Land Management. There is no provision for waiver of this mandatory requirement, and where evidence of assessment work is not timely filed, for whatever reason, the consequence must be borne by the claimant.

2. Evidence: Presumptions -- Evidence: Sufficiency -- Rules of Practice: Evidence

The legal presumption that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents filed with them is rebuttable by probative evidence to the contrary. However, a statement that evidence of assessment work was timely filed with the proper BLM office must ordinarily be corroborated by other evidence to establish filing where there is no evidence of receipt of the document in the file.

APPEARANCES: Larry C. Hoffman, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Larry C. Hoffman has appealed from decisions of the Montana State Office, Bureau of Land Management (BLM), dated May 25 and 27, 1982, which declared the

Tail Holt, Timberlehne, Teryl Lynn, and Joe Pete Lode mining claims abandoned and void for failure to file either evidence of assessment work or a notice of intention to hold the claims within calendar year 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982).

In his notice of appeal appellant states "the notices of intent to hold were mailed from Butte in late November or early December 1981." In his statement of reasons appellant has enclosed a copy of a notarized and recorded affidavit of "annual representation" for the three claims M MC 24038, M MC 24039, and M MC 24040, recorded in Fergus County, Montana, on December 9, 1981. The record shows he is also lessee for M MC 42523. He indicates he checked with the owner of the latter claim, Mr. Albert Haab, to see if he had filed the assessment work for 1981. When he found out it had not been filed he asserts he prepared an affidavit for that claim, made a copy for BLM, made a copy of the December 9, 1981, affidavit for BLM, "and mailed all three" to BLM on December 16, 1981. He states, "I can only assume the letters were lost" and requests reconsideration of the abandonment ruling, because he felt he had performed the proper filings and there was no intent to abandon the claims.

[1] Section 314 of FLPMA requires that the owner of an unpatented mining claim located on public land shall file with the proper office of BLM before December 31 of each year a proof of labor or notice of intention to hold the mining claim. The statute also provides that failure to file such instruments within the prescribed time period shall be deemed conclusively to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982). Because no proof of labor or intention to hold was received for these claims for filing year (*i.e.*, calendar year) 1981, BLM properly deemed the claims to be abandoned and void. Mermaid Mining Co., 65 IBLA 172 (1982); Kivalina River Mining Association, 65 IBLA 164 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). Those claims for which timely filings are not made are extinguished by operation of law; intent is irrelevant if the necessary filings are not made. United States v. Locke, 105 S. Ct. 1785 (1985).

[2] Although appellant contends he submitted a copy of the December 9, 1981, affidavit to BLM, BLM does not have any record of receipt of this document. Nor is there any other indication in the record that BLM ever received this filing for 1981 for these claims.

A legal presumption of regularity supports the official acts of public officers in the proper discharge of their duties. Cascade Energy & Metals Corp., 87 IBLA 113 (1985); Phillips Petroleum Co., 38 IBLA 344 (1978). As was stated in H. S. Rademacher, 58 IBLA 152, 155, 88 I.D. 873, 875 (1981): "It is presumed that administrative officials have properly discharged their duties and not lost or misplaced legally significant documents submitted for filing." When an appellant claims he sent a document to BLM, but BLM has no record of receiving it, this presumption of regularity weighs against a

finding that BLM received the document and subsequently lost it through mishandling. Glenn W. Gallagher, 66 IBLA 49, 51 (1982). The presumption is not overcome by a statement that the missing document was submitted to BLM. Cascade Energy & Metals Corp., *supra*. See Wilson v. Hodel, 758 F.2d 1365 (10th Cir. 1985). Appellant admits nothing was ever filed with the State of Montana for the Joe Pete lode claim for 1981. The claim was properly declared abandoned. As for the Tail Holt, Timberlehne, and Teryl Lynn lode claims, there is evidence that appellant did file notice of assessment work with the State of Montana for these claims. However, there is no corresponding evidence to establish that a 1981 affidavit of assessment work was also timely filed with BLM for these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Gail M. Frazier
Administrative Judge.

